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15 *Attorneys for Defendants and Counter-claimants*
FRESENIUS MEDICAL CARE HOLDINGS,
INC. AND FRESENIUS USA, INC.

16
17 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

19 BAXTER HEALTHCARE
20 CORPORATION,
21 BAXTER INTERNATIONAL INC.,
22 BAXTER HEALTHCARE SA, AND
DEKA LIMITED PARTNERSHIP,

23 *Plaintiffs and Counter-defendants,*

24 *vs.*

25 FRESENIUS MEDICAL CARE
26 HOLDINGS, INC., d/b/a FRESENIUS
MEDICAL CARE NORTH AMERICA,
27 and FRESENIUS USA, INC.,

Defendants and Counter-claimants.

Case No. C 07-01359 PJH (JL)

**STIPULATION AND [PROPOSED]
ORDER TO STAY COUNTS VIII AND IX
OF PLAINTIFFS' FIRST AMENDED
COMPLAINT (DKT. NO. 115) AND
DEFENDANTS' RELATED
COUNTERCLAIMS AND AFFIRMATIVE
DEFENSES (DKT. NO. 117)**

1 WHEREAS, Plaintiffs asserted infringement of United States Patent No. 6,929,751
 2 entitled “Vented Medical Fluid Tip Protector Methods” (“the ’751 patent”) and United States
 3 Patent No. 7,083,719 entitled “Medical System Including Vented Tip Protector” (“the ’719
 4 patent”) in Counts VIII and IX of Plaintiffs First Amended Complaint (Dkt. No. 115),
 5 respectively; and

6 WHEREAS, the parties have discussed the possibility of streamlining this case,

7 NOW, THEREFORE, it is stipulated by the respective parties and their counsel of
 8 record:

9 The merits of Plaintiffs case with respect to Count VIII of Plaintiffs’ First Amended
 10 Complaint (Dkt. No. 113), relating to Plaintiffs’ assertion of infringement of the ’751 patent
 11 shall be stayed.

12 The merits of Defendants’ Counterclaim Counts XV and XVI of Defendants’ Answer to
 13 First Amended Complaint and Counterclaims (Dkt. No. 117), affirmative defenses and prayers
 14 for relief relating to the ’751 patent shall be stayed.

15 The merits of Plaintiffs case with respect to Count IX of Plaintiffs’ First Amended
 16 Complaint (Dkt. No. 115), relating to Plaintiffs’ assertion of infringement of the ’719 patent
 17 shall be stayed.

18 The merits of Defendants’ Counterclaim Counts XVII and XVIII of Defendants’ Answer
 19 to First Amended Complaint and Counterclaims (Dkt. No. 117), affirmative defenses and prayers
 20 for relief relating to the ’719 patent shall be stayed.

21 During the stay, the ’751 and ’719 patents shall not be the subject of Final Infringement
 22 Contentions and Final Invalidity Contentions under Patent L.R. 3-6, Defendants’ disclosure of
 23 reliance on advice of counsel and production of opinion under Patent L.R. 3-8, willfulness
 24 discovery, expert discovery including expert reports, dispositive motions, or trial.

25 However, other fact discovery relating the Plaintiffs’ claim of infringement of the ’751
 26 and ’719 patents and Defendants’ related Counterclaim Counts, affirmative defenses and prayers
 27 for relief relating to the ’751 and ’719 patents was completed before the December 1, 2008, Fact

1 Discovery Cut-Off date specified by this Court. (Dkt. No. 191)

2 Because the disputed claim terms currently pending before the Court do not include any
3 claim term from the '751 patent or the '719 patent, the stipulated stay of the '751 and '719
4 patents will not impact the current claim construction proceeding.

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1	December 17, 2008	December 17, 2008
2	By: <u>/s/ David K. Callahan</u>	By: <u>/s/ Michael E. Florey</u>
3		
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17	December 17, 2008	
18		
19	By: <u>/s/ Maureen K. Toohey</u>	<i>Attorneys for Defendants and Counter-claimants FRESENIUS MEDICAL CARE HOLDINGS, INC. AND FRESENIUS USA, INC.</i>
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ELECTRONIC FILING DECLARATION OF DAVID K. CALLAHAN, P.C.

I, David K. Callahan, declare as follows:

1. I am a partner at Kirkland & Ellis LLP, and I am Baxter Healthcare Corporation's legal counsel in the above-captioned litigation.

2. Pursuant to the Northern District of California Electronic Filing Procedures and General Order No. 45, I attest that Michael E. Florey, counsel for Defendants, Fresenius Medical Care Holdings, Inc., d/b/a Fresenius Medical Care North America, and Fresenius USA, Inc., (collectively “Fresenius”), and Maureen K. Toohey, counsel for Plaintiff DEKA Products Limited Partnership, concur in the filing of this document and have granted me permission to electronically file this document absent their actual signatures.

Dated: December 17, 2008

Respectfully submitted,

Kirkland & Ellis LLP

By: s David K. Callahan s/
David K. Callahan, P.C. (IL 620227),
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BAXTER HEALTHCARE CORPORATION,
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MEDICAL CARE NORTH AMERICA,
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Defendants and Counter-claimants.

Case No. C 07-01359 PJH (JL)

[PROPOSED] ORDER STAYING COUNTS VIII AND IX OF PLAINTIFFS' FIRST AMENDED COMPLAINT (DKT. NO. 115) AND DEFENDANTS' RELATED COUNTERCLAIMS AND AFFIRMATIVE DEFENSES (DKT. NO. 117)

1

2 PURSUANT TO STIPULATION, IT IS SO ORDERED, the merits of this case relating
 3 to Plaintiffs' assertion of infringement of U.S. Patent No. 6,929,751 ("the '751 patent") and U.S.
 4 Patent No. 7,083,719 ("the '719 patent") and Defendants' counterclaims and defenses of non-
 5 infringement and invalidity relating to the '751 and '719 patents are STAYED. During the stay,
 6 the '751 and '719 patents shall not be the subject of Final Infringement Contentions and Final
 7 Invalidity Contentions under Patent L.R. 3-6, Defendants' disclosure of reliance on advice of
 8 counsel and production of opinion under Patent L.R. 3-8, willfulness discovery, expert discovery
 9 including expert reports, dispositive motions, or trial. However, other fact discovery relating to
 10 Plaintiffs' assertion of infringement of the '751 and '719 patents and Defendants' counterclaims
 11 and defenses of non-infringement and invalidity of the '751 and '719 patents was completed
 12 before the December 1, 2008, Fact Discovery Cut-Off date specified by this Court .

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DATED: December 18, 2008

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